

LABOUR DEPARTMENT

The 13th February, 1969

No. 976-ASO-III-Lsb-69/3734.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of Messrs Hindustan Twyfords Ltd., Bahadurgarh.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 18 of 1968

*between*THE WORKMEN AND THE MANAGEMENT OF MESSRS HINDUSTAN TWYFORDS LTD.,
BAHADURGARH*Present.—*

Shri A.P. Anand with Shri Musafir' for the workmen.

Shri A.M. Naik' for the management.

AWARD

Sarvshri Amar Singh and Pritam Lal were in the service of Messrs Hindustan Twyfords Ltd., Bahadurgarh, district Rohtak. The duty of Shri Amar Singh was to drive the Truck No. P.N.R. 6319, belonging to the respondent Company. His services were terminated because it was found that he had cheated the respondent Company by charging Rs 84 for bringing 200 cft. of Stone Grit $\frac{1}{2}$ inch while the other drivers brought the same material for Rs 68. It is alleged that he dishonestly got prepared a false cash memo from the supplier showing that he had actually paid Rs 84. The services of Shri Pritam Lal were dispensed with because he refused to accept his transfer from Green House to the casting department without any sufficient cause and did not work in the casting department and thus he was deemed to be absent for the work entrusted to him for more than 8 consecutive working days from 7th October, 1966. The termination of the services of both the workmen gave rise to an industrial dispute which was sponsored by the Hindustan Twyfords Workers Union. The Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette notification No. ID/RK/33-68/3466, dated 12th February, 1968 :—

Whether the termination of services of Sarvshri Amar Singh, Driver and Pritam Lal are justified and in order ? If not, to what relief are they entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen by Shri Musafir, General Secretary of the Hindustan Twyfords Workers Union and the management filed their written statement.

With regard to Shri Amar Singh, Driver the position of the workmen is that Shri Amar Singh was completely innocent of the charges framed against him and no proper enquiry was held against him. It is alleged that Shri Amar Singh was not given any opportunity to produce the owner of the shop from whom he had purchased the Stone grits in order to satisfy the management that he had actually made the payment and was not guilty of cheating or dishonesty. The domestic enquiry held against Shri Amar Singh is said to be a faked one because the Enquiry Officer was the Labour Officer of the respondent company who was associated in preparing the prosecution cases and the charge-sheets and he was quite unfit to become a judge. Further it is alleged that there was a violation of the principle of natural justice as the workman was himself cross-examined and no opportunity was given to him to cross-examine the witness who appeared on behalf of the management and he was also not given proper opportunity to defend his case.

On behalf of the management it is pleaded that Shri Amar Singh was actually guilty of misconduct alleged against him and a fair and proper enquiry was held against him. The allegations against the Enquiry Officer or the so-called irregularities alleged to have been committed by him are denied.

As regards the case of Shri Pritam Lal, it is pleaded on his behalf that he was working in the Green House of the respondent factory since 14th January, 1963 and his work was quite satisfactory and he was a permanent employee getting his salary on monthly basis but the management wrongfully transferred him to the casting section where payment is made to the workmen on piece work basis. It is alleged that Shri Pritam Lal was a senior workman and if the transfer of a workman was at all considered necessary to the casting department then a junior workman should have been selected for the purpose and for this reason Shri Pritam Lal was justified in refusing to comply with the orders of the management to work in the casting section but the management wrongfully charged him. It is further alleged that the management without considering the reply of the workmen started a domestic enquiry and did not give him proper opportunity to defend himself. In the case of this workmen also it is pleaded that the Enquiry Officer being the Labour Officer of the respondent company was biased and his attitude was pro-management and he was quite unfit to be a judge. It is alleged that the management recorded the statements of the witnesses without segregating them or giving any opportunity to the workman to cross-examine them. It is alleged that the workman was asked to give his statement piece meal in reply to the statement of the witness for the management and one Mr. Sarkar representing the management was allowed to cross-examine the workman while the management witness were still to be cross-examined. It is alleged that the whole enquiry was a fake one and was in violation of the principle of natural justice because the workmen was given no opportunity to produce his witness in defence and even the findings of the so-called enquiry was not given to him.

The workman was however not dismissed for refusing to take charge in the casting section. He was placed under suspension for a period of 4 days with effect from 13th October, 1966 as a punishment for disobedience and since the workman persisted in refusing to take charge in the casting section, it was considered that he was absent from duty without reasonable cause for more than 8 consecutive working days and so his service was terminated under rule 3(b) of Section C of the Factories Standing Orders. It is pleaded on behalf of the workman that he never refused to work in the Green House so the termination of his services was wrongful and without proper charge sheet and enquiry and in violation of principle of natural justice.

On behalf of the management a preliminary objection has been raised that the terms of reference relating to this workman are misconceived and unwarranted in as much as they are based on the erroneous assumption that the management have terminated his services whereas in fact Shri Pritam Lal had himself terminated his contract of service under rule 3(b) of Section C of the Company Certified Standing Orders. On merits it is pleaded that he was initially employed as a caster in the casting department on 14th January, 1963 and he worked as such till he was transferred to the Green House section which itself comes within the over-all fold of casting department and so his refusal to accept his transfer back to the casting department was wrongful and by not working there, Shri Pritam Lal himself terminated his contract of service. As regards the domestic enquiry it is pleaded that Shri Pritam Lal was given full opportunity to defend his case and it is incorrect that the Enquiry Officer was biased or partial. It is pleaded that the Enquiry Officer conducted the proceedings in a most judicious manner and in accordance with the principle of natural justice. On the contrary it is alleged that the Enquiry Officer gave too much indulgence to Shri Pritam Lal because adjournments were granted to him at his instance, copies of the day to day enquiry proceedings were given to him and he was even allowed to write on the enquiry proceedings itself. It is denied that the statement of the witness of the management were taken without segregating them or that no opportunity was given to the workman to cross-examine them or that the workman was asked to give his statement piece meal. It is also denied that Shri Sarkar who represented the management was allowed to cross-examine the workman while the witness for the management were to be cross-examined. It is therefore pleaded that the allegation that the enquiry was a fake one or was in violation of the principles of natural justice, erroneous, unwarranted or untenable is not correct. The pleadings of the parties gave rise to the following issue :-

1. Whether the reference with regard to Shri Pritam Lal is unwarranted, because his service have not been terminated by the management ?
2. Whether the termination of service of Shri Amar Singh and Pritam Lal is justified and in Order ?

Issues Nos. 1 and 2.—So far Shri Pritam Lal, workman is concerned both these issues are in a way interconnected because if it is held that the refusal of Shri Pritam Lal to accept his transfer from the Green House to the casting department was not justified then it will have to be held that the workman himself was responsible for terminating his contract of service because of his refusal to work in the casting department and he automatically lost his lien on the service held by him under rule 3(b) of section C of the said certified standing orders of the respondent company and it would not be necessary to enter into any lengthy discussions as to whether the domestic enquiry held against the workman was invalid for the reasons given by him in his statement of claim and was thus in violation of principles of natural justice.

The learned representative of the workman has pleaded that Shri Pritam Lal has been in the service of the respondent Company from 1963 onwards and that he was getting Rs 130 or Rs 135 per mensem as a Checker in the Green House and if he had accepted his transfer to the casting department then his wages would have been reduced. It is pleaded that the workman was prepared to work in the casting department if a guarantee had been given to him and that his wages would not be reduced. It is submitted that Shri Pritam Lal was the Vice-President of the Hindustan Twyfords Workers Union and he used to hold gate meetings and meet the Manager Shri Naik in connection with the demands of the workmen generally. It is pleaded that the management were annoyed with Shri Pritam Lal on account of his trade union activities and wanted to degrade him and for this reason transferred him from the Green House where he was working as a Checker and getting good wages to the casting department where the wages are paid on piece work basis and his earning would have been reduced. It is submitted that the management was not competent to change the conditions of services of the workman to his detriment when no fault with his work was found.

I agree with the submissions of the learned representative of the workman that the management could not effect any reduction in the wages of the workman by transferring him from the Green House to the casting department without finding any fault with his work but I find that Shri A.M. Naik, Manager of the respondent concern has affirmed on oath that when Shri Pritam Lal was ordered to work in the casting department he was assured that his status, seniority and wages would not be affected by the proposed transfer but the workman refused to obey his orders without giving any reason and so a charge-sheet, Ex. M.2 was given to him and a proper enquiry was held and although it was found as a result of proper enquiry that the workman was not justified in refusing to accept his transfer to the casting department yet a lenient view was taken and he was only suspended from service for a period of 4 days as a measure of punishment but the workman still obstinately refused to accept the lawful orders and refused to work in the casting department.

After carefully considering the respective submissions of the learned representative of the parties I am of the opinion that the submissions of Shri Naik are correct. The representative of the workman wants the Court to believe that Shri Pritam Lal was prepared to work in the casting department if an assurance has been given to him that his wages would not be reduced but I find that no such plea was taken up in reply to the charge-sheet given to him. It is for the first time during the course of evidence in this Court that the workmen took up the plea that he did not refuse to work in the casting department if his wages were not affected. I, therefore, agree with the learned representative of the management that Shri Pritam Lal is himself responsible for terminating his services under the provision of rule 3(b) of section C of Certified Standing Orders by refusing to work in the casting department. The termination of services was therefore justified and in order and he is not entitled to any relief.

Now I come to the case of Shri Amar Singh. I agree with the learned representative of the workman that the termination of his services was not justified and in order and the findings of the Enquiry Officer must be held to be perverse. The learned representative of the workman has rightly pointed out that Shri Amar Singh

was merely employed as a Driver and not as a Purchase Officer and it was no part of his duty to make enquiries in the market, as regards the prices at which the stone grit was generally available or the price which was being paid for this material by the other drivers. Shri Amar Singh could have been held to be guilty only if there was some evidence before the management that Shri Amar Singh only paid Rs 68 for 200 cft. of Stone Grits $\frac{1}{2}$ inch and wrongly charged Rs 84 from the management and in this manner he pocketed Rs 16 and was thus responsible for cheating. Shri Amar Singh produced before the Enquiry Officer a cash memo given to him by the supplier that 200 cft. of stone grit have been supplied for Rs 84. The supplier was not examined by the Enquiry Officer and an inference has been drawn against the workman because two of his co-drivers stated before the Enquiry Officer that the supplier enquired from them as to whether they would also like a false cash memo for the stone grit purchased by them but they refused and said that they would only get a cash memo for the price actually paid by them. It is not the case of the management that the false cash memo was taken by Shri Amar Singh in the presence of any one of the witnesses and thus there was no direct evidence before the Enquiry Officer to prove that actually Rs 68 only were paid but a cash memo for Rs 84 was taken. Shri Amar Singh has been held guilty simply on the basis of the evidence of the witnesses who were informed by the supplier that Shri Amar Singh had taken a wrong cash memo. It is an elementary principle of justice that no finding can be properly arrived at simply on the basis of hearsay evidence.

It is submitted on behalf of the management that this Court can not sit as a Court of appeal over the findings of the Enquiry Officer and the conclusion arrived at by the Enquiry Officer can not be interfered with unless the enquiry is held to be vitiated on any of the grounds laid down by the Supreme Court in the authority cited as 1958-I-LLJ-260. This proposition of law is well established but when there is no evidence before an Enquiry Officer to come to a particular conclusion then his findings must be characterised as perverse. It has already been observed that there was no direct evidence before the Enquiry Officer on the basis of which he could come to a conclusion that Shri Amar Singh had actually paid Rs 68 only but in order to cheat the management he obtained a false cash memo for Rs 84 and in this manner he cheated the company.

In view of my findings above it must be held that the termination of services of Shri Amar Singh was not justified and in order. He is entitled to be reinstated with continuity of service but taking into consideration all the circumstances of the case I think he should get only 50 per cent wages from the date of his termination of services till the publication of this award.

P.N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated the 5th February, 1969.

No. 317, dated 6th February, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated the 5th February, 1969.

No. 975-ASOIII-Lsb-69/3737.—In pursuance of the provisions of section 17 of the Industrial Dispute Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Usha Spinning and Weaving Mills Ltd., Faridabad :—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 57 of 1967

between

Shri Raj Pal Singh workman and the management of M/s Usha Spinning and Weaving Mills Ltd., Faridabad

Present.— Shri L. D. Adlakha, for the workman.

Shri P. N. Gulati, for the management.

AWARD

Shri Raj Pal Singh was in the service of M/s Usha Spinning and Weaving Mills, Ltd., Faridabad, as a shift Jamadar in the Watch and Ward Department. There was an attempt to commit theft in the premises of the respondent company on the night between 19th/20th December, 1966, and the management came to the conclusion that the claimant was responsible for the same and accordingly his services were terminated. This gave rise to an industrial dispute. The Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,— *vide* Government Gazette Notification No. 270 -SFIII-Lab-67/21092, dated 20th July, 1967.

Whether the dismissal of Shri Raj Pal Singh, Shift Jamadar was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and a written statement was filed by the management. It was pleaded on behalf of the workmen that he has been victimised on account of his Trade Union Activities because he took a leading part in the strike which commenced in the respondent factory on 13th October, 1966 and continued up to 5th November, 1966 and accordingly a false charge was brought against him and a fake and baseless enquiry was held against him by Shri Madan Lal an employee of the management. It is alleged that Shri R.L. Anand Security Officer had personal enmity with the claimant and therefore he produced unreliable and untrue witness

and he also took the signatures of the claimant on certain documents without explaining the contents. It is alleged that the Enquiry Officer followed a highly unwarranted procedure because all the witnesses who appeared on behalf of the management were cross-examined by the management which has resulted in miscarriage of justice. Another irregularity alleged is that the witnesses themselves had the statements in their possession which the Enquiry Officer and the management wanted them to give in the course of enquiry and these statements were endorsed and exhibited by the witnesses themselves in the enquiry proceedings. It is further alleged that an important witness namely the Sweeper who entered the room first of all for cleaning and sweeping the room was not examined by the management. The case of the claimant is that his duty was over at 7 A. M. and the person taking the charge from him found every thing O.K. It is alleged that the windows remained bolted from inside and they were checked every time at the time of taking over and handing over the charge and no damage to the window or to the bolts had occurred nor was it proved that a person standing outside could open the window from inside without damaging the windows and the bolts. The findings of the Enquiry Officer are said to be baseless and perverse because the findings are even against the documentary evidence in possession of the management.

The management have controverted all the allegations of the claimant and have pleaded that a fair and proper enquiry was held against the claimant in which his guilt was satisfactorily established. The pleadings of the parties gave rise to the following issues :

- 1. Whether the Enquiry Officer who held the domestic enquiry was partial and the enquiry is vitiated for the reasons given in the statement of claim?
- 2. Whether the claimant has been victimised on account of his trade union activities?
- 3. Whether the claimant was guilty of an attempt to commit theft on the night between 19th/20th December, 1966 and therefore the termination of his services is justified and in order?
- 4. Relief.

The parties have produced evidence in support of their respective contention. I have heard the learned representative of the parties and have gone through the records. My findings are as under :

Issue No. 1 to 3 All these issues are in a way interconnected and can be conveniently discussed together. The case of the management is that the claimant was on duty as guard incharge on the night between 19th December, 1966 and 20th December, 1966 an in the night some miscreant entered the room of the Treasurer, broke open the cash box and scattered some important papers. It is alleged that in the morning when the Security Officer made an investigation into the incident it was found that a foot-print outside the window of the room in which this incident had taken place tallied with the foot-print of the claimant and that claimant also confessed that the foot print in question were his. He also did not make any report regarding this incident to his superior authority and from this the management drew an inference that he was negligent in the performance of his duty and that he had a hand in this incident. It is alleged that the charge framed against the claimant was duly established in the domestic enquiry. It is also alleged that the claimant was not a member of any union, nor did he take part in any union activities and therefore there was no question of any victimisation and for this reason the termination of his services was justified and in order.

The management have duly proved the record of the domestic enquiry and have led evidence to prove that the claimant never took part in any union activities. Shri Ram Nath Anand, Security Officer of the respondent concern has appeared in evidence and stated that on the morning of 20th December, 1966 he received a report regarding this occurrence from the Accountant Shri Mehash Kumar and he immediately inspected the spot and conducted a preliminary investigation. He says that he raised the foot-print found near the window of the room of the Cashier and paraded the watch and ward personnel and detected that the foot-print of the shoes of Shri Raj Pal claimant tallied with the foot-print found near the window. The witness states that he recorded the statement of the relevant person which is marked Ex. M. 5 to Ex. M. 11 and then he submitted his report Ex. M. 12 to the General Manager.

Shri Raj Pal Singh claimant has appeared as his own witness in support of his case. He has stated that he was an office bearer of the union of the workmen and was acting as a Cashier and has been taking part in the gate meetings. He says that in the year 1966 there was a strike in the respondent concern in which he took an active part by making speeches, holding gate meetings and collecting subscriptions. He further says that the Security Officer and the Head Jamadar warned him and asked him to desist from taking part in the gate meeting otherwise his services would be terminated but he ignored these threats and continued taking part in Trade Union activities. He further says that in order to victimise him the management made a report against him to the police that he was bad character and he should not be allowed to take part in the gate meetings and with a view to crush the union activities, the management terminated the services of the trade union leaders namely Sarvshri Devi, Tribhawan, Onkar, Ram Kishan, Duli Chand and Vir Dev, etc. and his services were also terminated because of his reason of his trade union activities and that the charges brought against him were false. The fairness of the domestic enquiry is attacked on the ground that the sweeper who cleaned the office before the arrival of the Cashier, Accountant etc was not examined and the complete statements of the witnesses of the management were not recorded by the Enquiry Officer in the presence of the claimant. It is alleged that the written statement of some of the witnesses were not read over to the claimant but still the Enquiry Officer relied upon them. The claimant says that his duty was only to check whether the doors, windows, etc. were properly fastened and he found that the windows were actually fastened from inside and a person could not enter through the windows without breaking them open. He says that in the morning Shri Ram Saran took over the charge from him at 7 A.M. and if they had been any defect it would have been brought to his notice but the entries in the register show that every thing was O. K.

I have carefully considered the above evidence. It is true that the domestic enquiry is defective to this extent that the Enquiry Officer accepted written statements of some of the witnesses and the record does not show that the written statement which were accepted by the Enquiry Officer were read over and explained to the claimant and he had an opportunity to cross-examine the witnesses whose written statements had been accepted by the Enquiry Officer. The Enquiry Officer has taken into consideration the written statement which were produced

before him by the witnesses. This is however only a technical defect. The claimant did not deny during the course of the preliminary enquiry that the foot-print before the window through which the miscreant entered tallied with his foot-print, this was obviously a circumstance which raised a suspicion against the claimant and its required his explanation. In his statement copy Ex. M.9 which has been proved by the evidence of Shri Anand, the claimant explained before him that his foot-print outside the window might have been caused while he was taking his routine round. I find absolutely no reason to doubt the testimony of the Security Officer. Now the claimant has denied outright that he admitted before the Enquiry Officer that the foot-print in question tallied with his foot-print and in view of this denial the question of giving any explanation in Court as to how this foot-print was caused does not arise. It is clear that the claimant is not speaking the truth in this Court when he says that he did not admit before the Security Officer that the foot-print outside the window tallied with his foot-print and he also did not come out with an explanation before the Security Officer that the foot-print in question might have been caused when was taking his routine round and he is thus trying to suppress some thing. Under these circumstances it has to be seen whether it would be desirable to compel the management to reinstate the claimant even if the domestic enquiry held against him is for any technical reason found to be defective. It must not be forgotten that the claimant is a member of watch and ward department of the respondent concern. It is the duty of the personnel of the watch and ward department to protect the property of the respondent concern, and if during the night some miscreant enters the premises and attempts to commit an offence then it is a part of the duty of the guard incharge to assist the management in arriving at the truth. Only a person in whom the management has absolute confidence can be retained in this department. It does not behove a member of the watch and ward department to sit with his mouth shut and call upon the management to prove that it was he who was responsible for the mischief. For the purpose of ascertaining the truth the management has to depend upon the watch and ward department. Shri Anand is incharge of this department and is responsible to see that all the persons employed in his department perform their function honestly and diligently and can be relied upon. In the present case we find that the claimant is falsely challenging the very bona fides of his immediate officer and things that a false story has been made up to just to implicate him because of his alleged trade union activities. Under these circumstances it would be impossible for the Security Officer and the claimant to work together and it would not be desirable to reinstate the claimant.

I agree with the learned representative of the management that in case the foot-print found outside the window tallied with the foot-print of the claimant then one of the inferences which could be raised against him was that he himself might have attempted to commit the theft and if that be so it would not be correct to say that he was merely negligent in the performance of his duty or that he had a hand in the affair. To this extent the charge framed against the claimant can not be said to be very accurate but in domestic enquiries we can not expect the management to be so very technically accurate in such matters. We have to see broadly as to whether the workman understood what case he had to meet and the management acted fairly in holding the enquiry and that the workman was not prejudiced in his defence. It does not appear that the workman was misled by reason of the inaccuracy in the charge. As a matter of fact this point has been raised by the learned representative of the workmen for the first time during the course of the argument. As already observed the inaccuracy in the charge is merely technical. The claimant does not deny that he was on duty on the night between 19th December, 1966 and 20th December, 1966. There is absolutely no reason as to why the accountant should have made a false report that the cash box was found broken open and the important papers were lying scattered about.

The workman has stated that he was an active member of the union and that he held the office of the Treasurer but no record of the proceedings of the union in which he was elected as a Treasurer has been produced. The workman states that he used to collect the subscriptions. No receipts bearing his signatures regarding the collection of subscription have been produced. We have only oral evidence of the alleged trade union activities of the claimant and in my opinion this evidence is not sufficient to prove that the claimant was in fact a troublesome trade unionist and the management have trumped up a false case against him in order to get rid of him.

The learned representative of the workman has tried to pick holes in the evidence of the management produced before the Enquiry Officer and has submitted that the bolt and the lock which are said to have been broken open were not produced before the Enquiry Officer. He says that the sweeper who was the first to go to the room of the cashier in the morning was not produced and lastly the person who took charge from the claimant in the morning did not then bring to the notice of the authorities that there was any thing wrong with the window leading to the door of the treasurer, but on the contrary the entries in the register show that every thing was O.K. It is submitted that no body could have entered the room of the cashier without breaking open the window and the person taking over the charge could not have failed to notice it.

The learned representative of the workman is a experienced advocate of good standing and what he says is correct. If the claimant was to be prosecuted in a criminal court for attempting to commit a theft then probably it would have been a very up-hill-task for the management to prove his guilt but a domestic enquiry is quite a different thing. It is not expected to be as elaborate as a criminal trial and the type of efficiency which is expected from a trained police officer can not be expected from a laymen. If a case of the present type were to be investigated by a police officer then the first thing he would have done, would have been to take into possession the bolt and the lock found to be broken open, examine the finger-prints if any found on them and on the window cover the foot-prints near the window, prepare the moulds and get them compared with the sample foot-prints of suspected person in a scientific manner and interrogate all persons reasonably expected to have knowledge of the incident. The management is not expected or required to make such detailed investigations. The main object of making a domestic enquiry is not to secure the conviction of the workman for a criminal offence. In the present case it has been proved by the domestic enquiry that it would not be desirable to continue keeping the workman in the service and for the purpose of arriving at this conclusion the management acted bona fide and did not try to harass or victimise their workman.

It would not be out of place to point out that during a domestic enquiry both the parties are expected to act in a fair and honest manner. The domestic enquiry is not like a criminal trial in which no responsibility is cast upon the accused to speak the truth and the whole responsibility for proving the quilty of the accused lies on the prosecution. During the course of a domestic enquiry the workman is also expected to speak the truth and place all the facts before the Enquiry Officer in order to enable him to come to a correct conclusion. If therefore, a workman refuses to explain any circumstances appearing against him or gives a false explanation then the management would be justified in no longer placing their trust on such a workman and if under such circumstances his services are terminated it would not be correct to direct his reinstatement even if the inquiry is found to be technically defective.

Examining the present case in the light of the principles enunciated above we find that the Security Officer on receiving a report that the cash box in the room of the treasurer was found broken open, immediately came to the spot. He found a foot-print just outside the window and the first thing he did was to parade the personnel of the watch and ward department in order to eliminate the possibility that any of the personnel of the watch and ward department had an hand in the occurrence. The Security Officer found that the print of the shoe of the claimant tallied with the foot-print found under the window and so he recorded his statement in which the claimant admitted that the foot-print was his and he gave a wrong explanation that the foot-print was caused when he was taking the routine round in the discharge of his duties. Under these circumstances it can not be said that the management was not justified in raising an inference that foot-print found outside the window might have been caused by a person who attempted to commit the theft and the claimant not only failed to report to the management regarding the attempted theft that took place during the course of his duty but gave a false explanation that his foot-print might have been caused when he was taking a routine round. The action of the management therefore in terminating the services of the claimant can not be said to be *mala fide*.

I agree the learned representative of the claimant that the charges framed against the claimant were not very accurate. The claimant has been charged for negligence or having a hand in the affair. The circumstances of the case suggest that probably the claimant himself might have attempted to commit the theft and the charge to this fact was never framed against the claimant, but even in a criminal trial a defect in the charge of omission to frame a charge does not result in the acquittal of the accused unless it is shown that the accused has been prejudiced thereby. In the present case it has not been shown that any prejudice has been caused to the claimant by reason of this defective charge. The enquiry is no doubt technically defective because the Enquiry Officer took into consideration written statements produced before him by the witnesses but taking into consideration all the circumstances of the case I am of the opinion that it is not a fit case in which the claimant should be reinstated or that any back wages be awarded to him.

Dated the 3rd February, 1969.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 316, dated the 6th February, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 3rd February, 1969.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 973-ASOIII-Lab-69/3743.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s G.H.R. Industries, Faridabad :—

BEFORE SHRI P.N. THUKRAL. PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 54 of 1968

between

SHRI BALBIR SINGH WORKMAN AND OTHERS AND THE MANAGEMENT OF M/S G.H.R. INDUSTRIES, FARIDABAD

Present

Shri Darshan Singh, for the workman.
Shri R.C. Sharma, for the management.

AWARD

Sarvshri Balbir Singh, Mohar Singh and Muneshwar Singh were in the service of M/s G.H.R. Industries, Faridabad. They were retrenched from service. This gave rise to an industrial dispute and the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication *vide* Government Gazette Notification No. 1D/FD/15808, dated 26th June, 1968 :—

Whether the termination of the services of Shri Balbir Singh, Mohar Singh and Muneshwar Singh was justified and in order ? If not, to what relief are they entitled ?

On receipt of the references usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. The pleadings of the parties gave rise to the following issues.—

- (1) Whether the objection that section 2A of the Industrial Disputes Act, 1947, is *ultra vires* can be raised in this Court ?
- (2) Whether the claimants do not fall within the definition of workmen as given in the Industrial Disputes Act ?
- (3) Whether the reference is vague and invalid for the reasons given in the preliminary objections ?
- (4) Whether this Court has no jurisdiction ?

- (5) Whether the appointment of the Presiding Officer of the Court is not valid?
- (6) Whether the termination of the services of the applicant Sarvshri Balbir Singh, Mohar Singh and Muneshwar Singh was justified and in order? If not, to what relief are they entitled?

The parties have produced evidence in support of their respective contentions. I have heard the learned representative of the parties and have gone through the records. My findings are as under:—

Issue No. 1.—This Court is a Court of special jurisdiction constituted under the Industrial Disputes Act. It has no jurisdiction to adjudicate upon the vires of any provision of the Act. I, therefore, find this issue in favour of the workmen.

Issue No. 2.—It is submitted that the workmen named in the order of reference do not fall within the definition of the term "workmen" as given in clause (s) of section 2 of the Industrial Disputes Act, 1947, because they are no more employees of the management. There is no substance in this objection because the expression "workman" as defined in clause (s) of section 2 of the Act means not only a person who is actually employed in any industry but for the purpose of any proceedings under the said Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute. I, therefore, find this issue also in favour of the workmen.

Issue No. 3.—It is submitted that the reference is vague and invalid for the following reasons:—

- (i) There was only an individual dispute but the Government has converted it into an industrial dispute, i.e., a dispute between the body of the workmen on one hand and the management on the other and the Government has no power to convert an individual dispute into an industrial dispute.
- (ii) It is not indicated in the order of reference as to from which date and in what manner there has been termination of the services.

I have carefully considered the submission of the learned representative of the management in support of the above objections and in my opinion there is no substance in any of the objections raised above. Under Section 2A of the Industrial Disputes Act a workman if aggrieved by reason of the termination of his services whether by way of discharge, dismissal, retrenchment or otherwise can raise a dispute even if no other workman or any union of workman is a party to that dispute and this dispute is deemed to be an industrial dispute which as defined in clause (k) of section 2 of the Industrial Disputes Act would mean *inter alia* a dispute or difference between the employers and workmen. Thus by fiction of law an individual dispute is now deemed to be an industrial dispute and the order of reference can not be said to be invalid.

The learned representative of the management has not cited any authority in support of his contention that it is incumbent upon the Government to mention in the order of reference as to from which date and in what manner the services were terminated. There is also no force in the objection that in the absence of the necessary particulars in the order of reference the workman can distort the facts in any manner he likes to his advantage later on. Immediately on receipt of the order of reference the workmen were called upon to file their statement of claim so that all the necessary particulars come on the file before the management are called upon to file the written statement. Moreover the management have not shown that they have been prejudiced in any manner for want of any particulars. I, therefore, find this issue also in favour of the workmen.

Issue No. 4.—It is submitted that the claimant were retrenched from service but the order of reference recites that the reference has been made under section 10(1)(c) of the Industrial Disputes Act and the Labour Court has no jurisdiction to decide the issues of legality or illegality, justification or non-justification of the retrenchment. It is correct that the matter relating to retrenchment of workmen and closure of establishment falls under item No. 10 of the third schedule and this matter falls within the jurisdiction of the Industrial Tribunal but under the proviso to clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, the appropriate Government is competent to refer any matter specified in the 3rd schedule to the Labour Court if it is not likely to affect more than 100 workmen. In the present case only three workmen are affected and therefore it can not be said that the reference to this Court is invalid. No authority has been cited on behalf of the management that it is incumbent upon the Government to mention in the order of reference itself that the reference to the Labour Court is being made under the proviso to sub-section (1) of section 10. I, therefore hold that this Court has jurisdiction to adjudicate upon the dispute referred to this Court.

Issue No. 5.—It is submitted that the present Presiding Officer was originally appointed to act as a Presiding Officer of the Labour Court against a vacancy but the same appointment was never notified by the Government of Haryana. According to the learned representative of the management the Government under section 7 of the Industrial Disputes Act has to take two steps (i) to constitute the Labour Court (ii) to appoint the Presiding Officer. It is urged that these acts can be done simultaneously either by separate notifications or by one and the same notification and in the absence of any notification that the Presiding Officer at Rohtak is either transferred to Faridabad or is re-appointed, he cannot function.

There is no force in this objection also because the appointment of the present Presiding Officer was duly notified *vide* Notification No. 7103-3Lab-67/25650, dated 24th August, 1967 which reads as under:—

"On appointment under section 8 of Industrial Disputes Act, 1947, Shri P.N. Thukral, District and Sessions Judge, Delhi, assumed the charge of the office of the Presiding Officer, Labour Court, Rohtak, on the afternoon of 17th July, 1967."

By Notification No. 5414-3Lab-68/15754 dated 20th June, 1968, the Headquarters of the Labour Court were shifted from Rohtak to Faridabad by amending the notification No. 11495 12474-C-Lab-57/11345, dated 7th February, 1958 by which the Labour Court was constituted with its headquarters at Rohtak. Previously the jurisdiction of the Presiding Officer extended throughout the State of Haryana and by shifting the Headquarters

of the Court from Rohtak to Faridabad, there was no change in the jurisdiction and therefore no separate notification regarding transfer or re-appointment was necessary. I therefore, hold that there is no defect in the appointment of the Presiding Officer of this Court.

Issue No. 6.—Shri Jaginder Pal Singh M.W. 1 partner of the respondent concern has stated that the claimant used to work in the fabrication department where steel windows and door used to be manufactured. He says that Sarvshri Balbir Singh, Mohar Singh were assistant mistries and Muneshwar Singh was the Mistry. and this department has now been closed because the work was not being done properly and they were incurring losses. He says that the order which was in hand had to be given up and the money was refunded and the services of the claimant were retrenched in accordance with law. The claimants in their evidence have not challenged the correctness of this portion of the statement and it must therefore be held that the department in which the claimants were employed has been closed and the only question for determination is whether the claimants have been validly retrenched that is to say whether the conditions laid down in section 25F of the Industrial Disputes Act were duly complied with before effecting the retrenchment.

In this connection Shri Jaginder Pal Singh, M.W. 1 states that before effecting the retrenchment of the claimants a notice in form Ex. M. 1 was served on them and the labour department was informed in form P marked Ex. M. 2. He further states that the wages were distributed to the workmen on 8th April, 1968 and the claimants were asked to accept the same but they refused and so after few days the amount due to them was sent by money order marked Ex. M. 3 to Ex. M. 5 but the claimants again refused to accept it. He says that the details of the account of the claimants were also sent to them by registered post and the copies of these details are marked Ex. M. 6 to Ex. M. 8.

In rebuttal all the three claimants have appeared in evidence. They admit that they did receive one month notice and their services were terminated accordingly. They stated that apart from this notice they did not receive any letter under registered cover giving them the details of the money due to them nor did they receive any money order. They maintained that after the expiry of the notice period no money was tendered to them and they were simply told not to come on the next day.

I have carefully considered the evidence produced by the parties it and in my opinion it does not appear that Shri Jaginder Pal Singh is speaking the truth when he says that on 8th April, 1968 the claimants were asked to accept their dues but they refused and so after a few days the amount due to them was sent by money order. Shri Jaginder Pal Singh does not even say what amount was actually tendered to each of the claimants and what reason they gave for refusing to accept the amount tendered to them. It is also not clear why the management felt it necessary to send the details of the account copy marked Exhibit M. 6 to Ex. M. 8 to the claimant by registered post. It is not suggested that the claimant did not know the amount due to them and which had already been tendered to them and it was considered necessary to intimate to them by registered post the amount to which each of them was entitled.

Section 25F of the Industrial Disputes Act requires that when a workman is to be retrenched then it is incumbent upon the management to give a notice in the prescribed manner to the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official gazette. It is really surprising that while details of the amount due to the claimant which was not required to be sent were sent under registered cover but a notice to the appropriate authority is supposed to have been sent by ordinary post. Shri Jaginder Pal Singh admits in cross-examination that they have no documentary proof that these notices were actually sent. He admits that the management do not maintain even a despatch register. Under these circumstances a doubt does arise as whether the notice in form P copy marked Ex. M. 2 was actually sent. No official of the department concerned has been summoned to prove the receipt of these notices.

The alleged tender of the amount due to the claimants at the time they were retrenched also appears to be doubtful. The services of the claimant came to an end on 8th April, 1967 and the management wants the Court to believe that the claimant refused to accept the amount tendered to them. The management then took almost 12 days to send the amount due to the claimant by money order. In the letter copies marked Ex. M. 6 to Ex. M. 8 the management have mentioned the cause for this delay. It is stated that the excuse uniformly given by all the three claimants for refusing to accept their dues was that they wanted to consult some body in this connection and would turn up on the next day for the purpose but they did not turn up for receiving the payment till the date on which the statement account were despatched under registered cover. This reason appears to be a made up one. It appears that the management were probably not aware of the technical provisions of section 25 F of the Industrial Disputes Act which lays down the conditions precedent to retrenchment of the workmen and for this reason the wages due and the retrenchment compensation was not actually tendered to the claimants and later on the management have tried to create an excuse for the delay in tendering the amount. The management have not even suggested that when one month notice was given to the claimants intimating to them that their services would be no longer required, any of them protested and said that they were not willing to be retrenched and for this reason they did not accept the retrenchment compensation but misled the management by telling them that they would consult somebody. In case the management knew that tendering of the retrenchment compensation etc. is a condition precedent to the retrenchment they would have told the workmen there and then that there was no question of consulting any body in this connection because the amount due has to be tendered to them and if they had any objection to it they should receive the amount under protest and if the workmen even then refused to accept the amount then it could have been sent to them if considered necessary by money order on the very next day and it was not necessary for the management to wait for this purpose for 12 days. In my opinion all these circumstances show that no amount was actually tendered to the claimants and for this reason their retrenchment is not valid. However, there is no post against which they can be reinstated and therefore the question of their reinstatement does not arise.

The money order coupons produced on the file do not indicate the address at which these money orders were sent. The endorsement on these coupons are to be effect that the payees had left the place. There is no evidence that these money orders were sent to the claimant at their correct address. The claimant have affirmed on oath that they did not receive the money orders at all. It cannot, therefore be said that the amount due to the claimants is deemed to have been tendered to them by money order. They must, therefore, be deemed to be in

service of the management till the amount due to the claimants is tendered to them in accordance with law and the appropriate Government informed in the manner prescribed.

Dated: 30th January, 1969.

P. N. THUKRAL.

Presiding Officer,
Labour Court, Faridabad.

No. 315.

Dated 6th February, 1969.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated: 30th January, 1969.

P. N. THUKRAL.

Presiding Officer,
Labour Court, Faridabad.

R. I. N. AHOOJA, Secy.

INDUSTRIES DEPARTMENT

The 22nd/20th February, 1969

No. 856-2IB-69/4735.—The Governor of Haryana is pleased to make the following appointment with effect from the date shown in Column below:—

Name and Rank of the Officer	Appointed as	With effect from	REMARKS
Shri D. V. Virmani, Deputy Director (Class II)	Deputy Director (Class I) in the grade of Rs 500— 25—600/40—800/50—1,000	3rd October, 1968 (forenoon)	

R. I. N. AHOOJA.

DEPARTMENT OF INDUSTRIAL TRAINING

The 17th February, 1969

The 14th February, 1969

No. 1490-3IB-69 4342.—In exercise of the powers conferred by sub-section (2) of section 26 of the Apprentices Act 1961 in supersession of Haryana Government notification No. 598-8IB-66 70, dated the 3rd December, 1966, The Governor of Haryana is pleased to appoint the Director of Industrial Training as the State Apprenticeship Adviser, Haryana, with effect from the 20th January, 1969.

R. I. N. AHOOJA, Secy.

कार्यालय वित्तायुक्त हरियाणा

राजस्व विभाग

दिनांक 18 फरवरी, 1969

मंस्ता 608-ई(2)-69/3791.—दण्ड प्रक्रिया संहिता की वारा 12 (1) द्वारा प्रदत्त की गई शक्तियों का प्रयोग करते हुए हरियाणा के राज्यपाल, श्री मेहर चन्द, नायब, तहतीलदार व वृत्ती करनात नगरपालिका को भजिस्ट्रेट द्वारा श्रेणी की शक्तियां संभव प्रदान करते हैं ताकि वह पंजाब नगरपालिका अधिनियम 1911 के अधीन नगरपालिका, करनात की सीमाओं के भीतर वस्ती की करवाई कर सके।

एन. ईसा दास,

उप-सचिव, हरियाणा सरकार,
राजस्व विभाग।